IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.45882 of 2005
SANJAY KUMAR SAH & ORS
Versus
THE STATE OF BIHAR AND ANOTHER

For the petitioners : **Mrs. Anjana Prakash, Senior Advocate And Mr. Shivendra Kumar Sinha, Advocate.**
For the State : **Mr. Jharkhandi Upadhayay, A.P.P.**

O R D E R

The three petitioners who along with others figure as F.I.R. named accused in Balwa Bazar P.S. Case No.3 of 2003 but against all of whom final form was submitted by the police are aggrieved by and have prayed for the quashing of order dated 27.8.2004 passed therein by Sri B. Tiwary, Judicial Magistrate, First Class, Supaul, whereby he having differed from the police report has taken cognizance under Sections 341, 383, 304/34 I.P.C. against 11 of the F.I.R. named accused including the petitioners.

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The prosecution case as culled out from the fardbeyan given by the informant, Sita Ram Sahu, at about 5 P.M. on 26.3.2003, inter alia, is that earlier that day at about 1.30 P.M., accused Jai Krishna Sah alias Munu Lal Sah, was dumping earth on the lands of the informant for purported construction of a village road which was objected to by the informant on the ground that the matter relating to the possession thereof was pending decision of the Panchayat and no earth should be dumped till decision regarding the land was reached. It is said that in the mean time, Baldeo Sah, the Gram Sewak, also

arrived and seeing the ensuing dispute prohibited the accused from dumping earth and to wait till a decision was reached. It is said that as the Gram Sewak left so did the informant leave for his home and on reaching home found his 80 years old mother, Lukhiya Devi, sitting in the shade in the fields near the P.O. It is alleged that in the mean time, the said Jai Krishna Sah, again arrived with a tractor full of earth and started dumping the same whereupon Lukhiya Devi raised hulla which attracted the informant and he again went at the spot and again prohibited dumping of the earth. It is alleged that in the mean time the remaining 11 accused arrived and started helping in dumping the earth and again the informant raised protest whereupon accused, Jai Krishna Sah, Deo Narayan Sah and Mahendra Sah, caught hold of the informant and accused Mahendra Sah, assaulted him with slaps and fists whereas accused mother of Vijay Kumar Sah, accused Nilesh Kumar Sah and accused Binod Kumar Sah, caught hold of the informant's mother and pushed her as a result whereof she fell on the walls of neighbour Vijay Kumar Sah. A hulla was raised that Lukhiya Devi had died whereupon the informant arrived there and found his mother unconscious and breathing slowly and 10 minutes later she expired. It has been alleged that the aforesaid persons had intentionally pushed his mother onto the wall so as to cause her death.

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The main grievance of the petitioners is that when after due investigation and supervision a final form was submitted against all the accused by the police , the learned Magistrate without any cogent reasons had differed from the same and had taken cognizance against

the face of the materials that were available in the case diary. In this connection, it was sought to be submitted that admittedly allegation was that Vijay Kumar Sah, Nilesh Kumar Sah and Binod Kumar Sah, had pushed Lukhiya Devi, as a result of which she fell upon the wall became unconscious was breathing slowly and had died 10 minutes later. It was also submitted that admittedly there was a land dispute in between the informant and it was when Jai Krishna Sah was dumping earth on the said lands that the informant had raised objections. The learned counsel also referred to the post-mortem report of the deceased Lukhiya Devi wherein the cause of death was attributed to cardio respiratory failure and it was apparent therefrom that Lukhiya Devi had died a natural death and it was only because of the previous enmity that the petitioners had been implicated.

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The learned counsel further sought to submit that co-accused Vijay Kumar Sah had lodged Balwa Bazar P.S. Case No.13 of 1996 under Section 307 I.P.C. against Sita Ram Sahu, the informant of the present case giving rise to Sessions Trial No.76 of 1996 which was pending and the petitioners had deposed against the present informant in that case and had, therefore, been falsely implicated in this case. It was also submitted that petitioner no.2, Vijay Kumar Sah, had earlier filed a case against the present informant being Balwa Bazar P.S. Case No.13 of 1996 and it was because of the said case that petitioner no.2 had been implicated as was petitioner no.3 who had also deposed against the present informant in Balwa Bazar P.S. Case No.76 of 1996.

So far as the submissions regarding the lodging of Balwa Bazar P.S. Case Nos.76 of 1996 and 13 of 1996 are concerned, they happen to be the defence of the petitioners which cannot be looked into at this stage. Even cause of death of Lukhiya Devi is a matter which is to be submitted at the time of the trial and cannot be looked into at this stage.

The learned Magistrate in the impugned order has found materials in paragraphs 5, 7, 8, 10 and 11 of the case diary which led him to form an opinion that there was sufficient material to proceed against the petitioners as also the other accused.

Taking of cognizance is a judicial function but the expression “taking of cognizance” in Section 190 Cr.P.C. has not been defined and has been interpreted to mean judicial application of mind of the Magistrate to the facts mentioned in the complaint/police report with a view to taking further action. Thus, what Section 190 Cr.P.C. contemplates is that the Magistrate takes cognizance once he makes himself fully aware of the allegations made in the complaint/police report and decides to examine or test the validity of the said allegations. In other words, it would mean that when the Magistrate takes notice and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, to constitute an offence decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of these offences.

In the instant case, the learned Magistrate has assigned

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reasons for differing with the police report and has also referred to the paragraphs of the case diary which led him to form an opinion for proceeding against the accused.

For the reasons stated above, I find no merit in this application which is dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 12th of September, 2008.
Pradeep Srivastava/A.F.R.

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